

Persons who permanently affix tangible personal property to real estate act as construction contractors and incur Use Tax liability on their cost price of tangible personal property they physically incorporate into realty. When construction contractors manufacture tangible personal property they will affix to real estate, the tax base includes all costs of materials used in manufacturing the finished item as well as nails, screws or other items of tangible personal property that he buys and incorporates into real estate for his customer in the course of making the installation of the finished item. See 86 Ill. Adm. Code 130.2075(a)(2). (This is a GIL.)

January 29, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter of August 18, 1998. We are unable to comply with your request for a Private Letter Ruling because our repeated requests to you to provide documents to satisfy the requirements of 86 Ill. Adm. Code 1200.120(b) were not fulfilled. Therefore, the nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We are hereby requesting a Private Letter Ruling on the basis of tax charged by COMPANY Co. to BUSINESS. Both parties involved have filed and paid said tax. Before we can process a refund to the customer and request a refund from the State of Illinois we need written verification.

Section 1200.110(b) (1-8) Private Letter Rulings

1a) Material facts-identification of all interested parties:

Customer (Purchaser) BUSINESS1

Contractor (Seller) NAME

1b) Business Reason for transaction: Invited to bid on the Project: Based on contract documents and a long time relationship with customer, our company was awarded contract.

1c) Details on transaction: Fabricated and installed fitting rooms, perimeter fixtures and various 1st floor hardware, column enclosures, moldings, shelving and entrance ways. Labor used in fabricating and manufacturing tangible personal property was included in the cost of finished item which was incorporated into the structure and the purchaser was taxed.(continued)

1c (continued)

Per Illinois Admin. Code CH.I, Sec. 130.2075 Subsection a2) As the purchasing and manufacturing construction contractor of a finished item being incorporated into a real estate structure, the tax base is that which the construction contractor pays for material used in the finished item and other items of tangible personal property involved with the installation of the finished item.

- 2) Copies of documents relevant to the request.
- 3) Tax period of issue: December 1994 thru Nov. 1995. An audit had been performed.
- 4) To the best of our knowledge the Department has not previously ruled on this issue.
- 5) Statement of Authority: Illinois Administrative Code
Ch. I, Sec. 130.1940
Subsec. C
Ch. I, Sec. 130.2075
Subsec. a2)
- 6) Statement of Authority Contrary: We are unable to locate an authority contrary to our views.

Persons who take tangible personal property and permanently affix it to real estate in Illinois act as construction contractors and incur Use Tax liability on their cost price of tangible personal property they physically incorporate into realty, 86 Ill. Adm. Code 130.1940.

On the other hand, construction contractors incur Retailers' Occupation Tax liabilities when they sell items that remain tangible personal property when installed. Please see Section 130.1940(b).

When the purchasing construction contractor (whether he is the prime contractor or the subcontractor) buys the item that he will convert into real estate in finished form, the tax base is what such construction contractor pays for the item. When the construction contractor-installer is also the manufacturer of the finished item that he will incorporate into real estate for his customer, the tax base is what such construction contractor pays for the materials that he incorporates into such item, plus whatever such construction contractor may pay for nails, screws or other items of tangible personal property that he buys and incorporates into real estate for his customer in the course of making the installation of the finished item. The tax base in this situation does not generally include labor expense incurred by such construction contractor when he manufactures the tangible personal property that he incorporates into real estate. See 86 Ill. Adm. Code 130.2075(a)(2).

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Karl Betz
Associate Counsel

KB:msk
Enc.